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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Billed Party Preference for)
InterLATA 0+ Calls)

CC Docket No. 92-77

REPLY OF THE INMATE CALLING SERVICE PROVIDERS COALITION

The Inmate Calling Service Providers Coalition ("ICSPC") hereby replies to Gateway Technologies, Inc.'s ("Gateway") Comments on ICSPC's Petition for Partial Reconsideration or Clarification of the Commission's *Second Report and Order and Order on Reconsideration*, FCC 98-9 (released January 29, 1998) (the "Order") filed April 9, 1998 in the above captioned proceeding (the "Petition").

Statement of Interest

ICSPC is an ad hoc coalition of companies that provide highly specialized telephone equipment and services to inmates in confinement facilities. ICSPC's members range in size from the nation's largest independent provider of inmate calling service ("ICS") to small companies serving only a handful of confinement facilities. They share in common the desire to offer the highest possible level of service to confinement facilities and inmate callers at rates that are fair, while providing a reasonable return on investment.

Discussion

ICSPC requested reconsideration of certain language in the *Order* that appears to be inconsistent with the Commission's obligation under Section 276 of the Communications Act of 1934, as amended, 47 U.S.C. § 276, to ensure fair compensation for ICS providers. ICSPC explained that the language in question suggests that the Commission sanctions state rate ceilings on local and intraLATA calls that set the rates for those calls at or below the incumbent LEC's standard collect call rates. ICSPC has demonstrated that those rate ceilings do not permit ICS providers to recover the substantial additional costs inherent in providing ICS, thus making it impossible for ICS providers to receive fair compensation. The issue of fair compensation for ICS providers is currently pending before the Commission as a result of the United States Court of Appeals for the District of Columbia Circuit's remand of ICSPC's petition for review of the Commission's *Payphone Orders*. To ensure that the Commission's decision on the compensation issue is not prejudiced by its apparent misstatements in the *Order*, ICSPC requested reconsideration or clarification to make clear that the Commission was not in fact sanctioning the state rate ceilings in contravention of its obligations under Section 276.

Gateway raises two objections to ICSPC's *Petition*. First, as a threshold matter, Gateway argues that the issue of fair compensation for ICS providers is properly before the Commission in its payphone proceeding and that the instant proceeding is the wrong procedural vehicle for raising ICSPC's concerns. Second, Gateway objects to ICSPC's proposed relief, which is that the Commission prescribe a \$.90 ICS compensation element

to ensure that the state rate ceilings do not preclude ICS providers from recovering compensation.

Both of Gateway's objections are without merit. As to Gateway's threshold objection—that the instant proceeding is an inappropriate vehicle for raising ICSPC's concerns—Gateway simply misunderstands ICSPC's purpose in raising the compensation issue in its *Petition*. ICSPC fully agrees with Gateway that the matter is properly before the Commission in the *Payphone Order* remand proceeding and ICSPC intends to fully address the issue in that proceeding. However, ICSPC is concerned that the Commission's decision in that proceeding not be prejudiced by the language in the *Order* that appears to suggest Commission sanctioning of the state rate ceilings. For that reason, ICSPC requested that the Commission reconsider or clarify the language of the *Order* out of an abundance of caution to ensure that its rights were preserved in the remand proceeding. It was *not* ICSPC's intent, as Gateway contends, that the Commission adopt in this docket ICSPC's proposal to ensure fair compensation.

Gateway's objection regarding the merits of ICSPC's proposal is no more valid than its procedural objection. According to Gateway, there is no need for the ICS compensation element proposed by ICSPC because the state rate ceilings do not or should not preclude ICS providers from recovering fair compensation. In Gateway's view, because Gateway assertedly is able to "earn a viable margin," the inability of ICSPC's members to do the same must be due to inefficiencies in their operations rather than a result of the state rate ceilings.

Gateway does not say in which states it has ICS operations. This is a critical piece of information because ICS rates vary widely from state-to-state. For example, as shown by the chart attached as Exhibit 1, the primary LEC's charges for a 12-minute daytime local inmate call range from a low of \$.85 in Tennessee to a high of \$4.06 in Illinois. Certainly if Gateway is doing business in Illinois, or in a state with similar rates, then there is every reason to believe that it is receiving fair compensation. In the states at the lower end of the rate spectrum, however, it is not possible to earn a reasonable return on investment no matter how efficiently an ICS provider is able to manage its business.

As Gateway acknowledges, there are "considerable additional costs" of providing ICS above and beyond the costs entailed in providing the standard collect calls on which state ICS rate ceilings are based. As ICSPC has previously demonstrated to the Commission, those additional costs have been quantified at \$.90 per call by the inmate service tariffs filed by AT&T, MCI, and Sprint. Even assuming that state rate ceilings are reasonable as applied to ordinary collect calling, many of them are demonstrably inadequate when applied to inmate service, given the considerable additional costs. While the rates allowed in states like Illinois may be sufficiently high to allow for recovery of those costs, in many other states that simply is not the case. For example, as shown in Exhibit 2, ICSPC's members doing business in North Carolina, which has the sixth lowest local inmate calling rate in the country, are *losing over \$.40 on every local inmate call*. In those states where the ICS rate ceiling does not even allow recovery of the ICS provider's costs, the Commission is clearly obligated to prescribe a fair level of compensation.

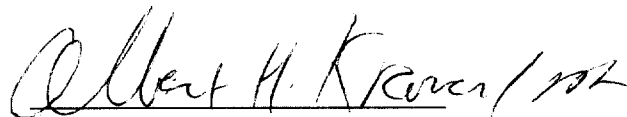
Conclusion

For the reasons shown above, the Commission should reject Gateway's Comments and grant ICSPC's *Petition*.

Dated: May 18, 1998

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Albert H. Kramer / 102", written over a horizontal line.

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber

Inmate Daytime Local Collect Call
April 1, 1997
12-Minute Call

Local Usage Rates				Collect Call		
State	RBOC	Init. Min#	Add'l Min/Notes	Surcharge	Total Cost	Cost w/ \$.90 Inmate Service Fee**
1 Illinois	Ameritech	\$0.1445	\$0.1275	\$2.50	\$4.06	no change
2 New Hampshire	NYNEX	\$0.26	\$0.24	\$1.05	\$3.95	no change
3 Kansas	SW Bell		Service charge in lieu of message charge	\$3.25	\$3.60	no change
4 Vermont	NYNEX	\$0.17	\$0.15	\$1.65	\$3.47	no change
5 Indiana	Ameritech	detariffed	N/A	\$3.00	\$3.35	no change
6 Wisconsin	Ameritech	detariffed	N/A	\$3.00	\$3.35	no change
7 California	SBC	\$0.35	includes \$.25 pay station fee	\$2.80	\$3.25	no change
8 Maine	NYNEX	\$0.18	\$0.14	\$1.30	\$3.02	no change
9 Texas	SW Bell		Service charge in lieu of message charge	\$3.00	\$3.00	no change
10 Ohio	Ameritech	\$0.35	N/A	\$2.50	\$2.85	no change
11 Georgia	S Bell	\$0.35	includes \$.25 pay station fee	\$2.45	\$2.80	no change
12 Kentucky	S Bell	\$0.35		\$2.25	\$2.60	no change
13 Nebraska	US West	\$0.35	N/A	\$2.25	\$2.60	no change
14 North Dakota	US West	\$0.35	N/A	\$2.25	\$2.60	no change
15 Wyoming	US West	\$0.35	N/A	\$2.25	\$2.60	no change
16 Oklahoma	SW Bell		Service charge in lieu of message charge	\$2.55	\$2.55	no change
17 South Dakota	US West	detariffed	N/A	\$2.10	\$2.45	no change
18 Michigan	Ameritech	\$0.35	N/A	\$2.05	\$2.40	no change
19 Connecticut	SNET	detariffed		\$1.75	\$2.10	no change
20 Colorado	US West	\$0.25	N/A	\$1.70	\$1.98	\$2.05
21 Missouri	SW Bell	\$0.35	N/A	\$1.60	\$1.95	\$2.05
22 Massachusetts	NYNEX	\$0.19	\$0.09	\$0.86	\$1.86	\$2.05
23 Arkansas	SW Bell		Service charge in lieu of message charge	\$1.80	\$1.80	\$2.05
24 New York	NYNEX	\$0.25	Init 3 min., \$.05 ea. add'l 2 min	\$1.30	\$1.80	\$2.05
25 Mississippi	S Bell	\$0.35	N/A	\$1.44	\$1.79	\$2.05
26 New Mexico	US West	\$0.25	N/A	\$1.50	\$1.75	\$2.05
27 Rhode Island	NYNEX	\$0.25	Init. 5 min, \$.05 ea. add'l 3 min.	\$1.35	\$1.75	\$2.05
28 Utah	US West	\$0.25	N/A	\$1.50	\$1.75	\$2.05
29 Idaho, No.	US West	\$0.35	N/A	\$1.30	\$1.70	\$2.05
30 Montana	US West	detariffed		\$1.35	\$1.70	\$2.05
31 New Jersey	B Atlantic	\$0.20	Init 4 min., \$.10 ea. add'l 4 min	\$1.26	\$1.66	\$2.05
32 Arizona	US West	\$0.35	N/A	\$1.30	\$1.65	\$2.05
33 Idaho, So.	US West	\$0.35	N/A	\$1.30	\$1.65	\$2.05
34 Alabama	S Bell	\$0.35		*\$1.25	\$1.60	\$2.05
35 Pennsylvania	B Atlantic	\$0.25	Init 10 min., \$.05 ea. add'l 3 min	*\$1.30	\$1.60	\$2.05
36 Hawaii	GTE	detariffed	N/A	\$1.20	\$1.55	\$2.05
37 Iowa	US West	\$0.25	Actual rate set by subscriber	\$1.30	\$1.55	\$2.05
38 Minnesota	US West	\$0.25	N/A	\$1.30	\$1.55	\$2.05
39 Oregon	US West	\$0.25	N/A	\$1.30	\$1.55	\$2.05
40 Delaware	B Atlantic	\$0.35	N/A	\$1.10	\$1.45	\$2.05
41 Florida	S Bell	\$0.35		\$1.10	\$1.45	\$2.05
42 Nevada	SBC	\$0.35	N/A	\$1.00	\$1.35	\$2.05
43 South Carolina	S Bell	\$0.35	Special Inmate rate	\$0.84	\$1.19	\$2.05
44 Virginia	B Atlantic	\$0.35	N/A	\$0.75	\$1.10	\$2.00
45 North Carolina	S Bell	\$0.3500	N/A	\$0.70	\$1.05	\$1.95
46 Louisiana	S Bell	\$0.35		*\$0.63	\$0.98	\$1.88
47 Maryland	B Atlantic	\$0.35	N/A	*\$0.60	\$0.95	\$1.85
48 West Virginia	B Atlantic	\$0.35	N/A	*\$0.60	\$0.95	\$1.85
49 Washington	US West	\$0.25	N/A	\$0.65	\$0.90	\$1.80
50 Tennessee	S Bell	\$0.35	N/A	*\$0.50	\$0.85	\$1.75
Note: Due to deregulation, the message charges shown are now market based. Tariff revisions may not reflect this. SWB -SBC, BellSouth, Bell Atlantic & Nynex VT have announced increases to \$0.35.				Average=	\$2.05	

*Bell Local Surcharge includes additional inmate service fee

* Note: Reduced Inmate Collect Surcharge required by state regulation.

**Note: Up to \$0.90 Inmate Service Fee is added to local collect call rate with rate not to exceed average of all state rates.

**NORTH CAROLINA - INMATE COLLECT CALLS - BELL SOUTH CURRENT
LOCAL COLLECT CALL COST EXHIBIT - 12 MINUTE CALL**

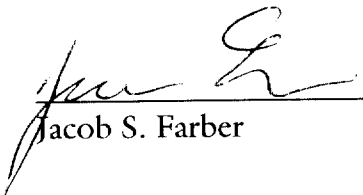
\$.35 LOCAL CALL	BELL SOUTH RATE
\$.70 REGULAR COLLECT SURCHARGE	LOCAL
	<u>\$0.35 + LOCAL SC</u>
REVENUE	<u>\$ 1.050</u>
PHONE COMPANY CHARGES:	
MONTHLY LINE CHARGE	\$ 0.051 ¹
MEASURED SERVICE	\$ 0.215 ²
BILLING AND COLLECTION FEES	\$ 0.221 ³
VALIDATION	\$ 0.207 ⁴
OPERATING COSTS:	
SITE OWNER COMMISSION	
LOCAL CALLS (30%)	\$ 0.315
BAD DEBT - 17%	\$ 0.179
MAINTENANCE & REPAIRS	\$ 0.048 ⁵
EQUIPMENT AMORTIZATION	\$ 0.091 ⁶
OVERHEAD	<u>\$ 0.151</u> ⁷
Total Costs	<u>\$ 1.478</u>
PROFIT/(LOSS) PER CALL BEFORE TAXES	<u>\$ (0.428)</u>

- 1) Based on \$30 per month line charge divided by an average of 585 calls per month. (468 local calls)
- 2) Measured service based on an 12 minute call with 50%/50% peak/off-peak mix and 1 Answered/Not Accepted call per Answered/Accepted call.
- 3) BellSouth billing and collection fees of \$0.36 for bill rendering, \$.06 per message with 7 messages per bill and a clearinghouse fee of \$.11 per message.
- 4) 3 validation queries at \$.0691 each for each billable call (1 No Answer/Busy, 1 Answered/Not-Accepted, 1 Answered/Accepted).
- 5) Maintenance and Repairs includes: 1 Technician with benefits and a 44-hour week servicing 150 lines, 1 vehicle and all parts - \$27.86 per month per line.
- 6) \$1,908 per line for equipment amortized over 36 months and an average of 585 calls per line per month.
- 7) Based on \$88.45 per month with 585 calls per line.

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 1998, a copy of the foregoing Reply of the Inmate Calling Service Providers Coalition was delivered by hand to the following:

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Jacob S. Farber